

Statement of Kevin Gover
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Before the on Indian Affairs,
United State Senate on S. 2097,
A Bill to Encourage and Facilitate the
Resolution of Conflicts Involving Indian Tribes
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Good morning, Mr. Chairman and members of the Committee. My name is Kevin Gover, Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am pleased to offer the views of the Department on S. 2097, a bill to encourage and facilitate the resolution of conflicts involving Indian tribes.

It is our policy to encourage tribes, states, and local communities to work together on matters of mutual concern. To this end, we also encourage the resolution of disputes through intergovernmental agreements. Therefore, we support the general concepts of S. 2097 regarding the encouragement and facilitation of intergovernmental agreements among tribes, states and local communities.

While we support these general concepts, the bill raises other issues that deserve consideration. The bill addresses only the issue of retail taxation of transactions occurring on Indian lands by state and local governments. This is only one of several potential areas for disagreement between tribes, states, and local governments. Section 105 (b)(2) recognizes that there are other areas of possible conflict, including law enforcement, civil and criminal jurisdiction, taxation generally, transportation, and economic development. The Department's position is that legislation designed to encourage and facilitate intergovernmental agreements and cooperation should be applicable to all areas of potential disagreement.

Interior shares the view of Federal Mediation and Conciliation Service that modest technical changes could eliminate potential confusion and uncertainty regarding the operation of the dispute resolution process. We would encourage the Committee to work with staff at the Departments of Interior and Justice, where ADR has been given a great deal of prominence. We are confident that the DOJ would be pleased to assist the Committee in insuring that effective, voluntary and consensual dispute resolution services can be created in this legislation.

Looking at the issue from another perspective, we believe it unfortunate that so much time and attention is being paid to the issue of retail taxation. Just last month, I testified before the House Resources Committee on H.R. 1168, a bill that would prohibit the Secretary from taking land into trust for tribal governments or individual Indians unless the tribe enters into a binding agreement with state and local governments for the collection and payment of state and local sales and excise taxes on retail purchases made on that land by non-Indians. In opposing that legislation, I pointed out that according to the [1995 Arizona Legislative Council Report](#), at least 18 different states have entered into agreements with over 200 Indian tribes regarding the issue of retail taxes on goods sold

to -non-Indians from Indian lands. I also pointed out that states can enact legislation that

provides alternative means for collecting taxes on goods sold to non-Indians, and that a variety of states, including Oklahoma, California, Michigan, New York and Wisconsin, have already done so.

Given the number of existing, voluntary tribal-state agreements in this area, and given the ability of state legislatures to enact state tax laws that can virtually ensure the collection of this type of tax, the Department believes those processes should receive more deference. Perhaps a more fruitful and enlightening line of inquiry for all of us --the Administration, Congress, state governors legislatures and attorneys general-- would be to consider why so many tribes and tribal members pursue retail sales of items such as petroleum and tobacco products as a means of economic development. I think the simple answer to that question is that there are few other avenues for economic development and entrepreneurship in tribal communities. The more difficult question that faces us is what we can do to provide more opportunities for tribal economic development and self-sufficiency.

Tribes are also governments and have the same responsibilities for providing services to their communities as do states and local governments. Yet most tribes do not have a significant tax base, and they must, therefore, enter into commercial-type businesses in order to raise governmental revenues. The goal of both the Federal government and state governments should be to foster tribal self-sufficiency, not to prevent it. In this regard, it bears remembering that most tribal communities do not have a comprehensive economic structure, and that tribal dollars are generally spent in non Indian communities where they support non-Indian businesses and the tax base of these local communities and the state as a whole. However, while both Congress and the Administration regularly proclaim to the tribes the goal of self-sufficiency, we often forget that, due to jurisdictional conflicts with states, tribes are deprived of the ability to use tax aid or regulatory policy to encourage specific economic activity. These tools are used by local, state, and even the federal government to encourage economic activity deemed desirable, but tribes are unable to use these tools.

We offer the following additional comments on S. 2097. We support the creation of the Joint Tribal-Federal-State Commission on Intergovernmental Affairs under section 105 of the bill. The Commission's duties should be clarified to include the identification and consideration of (1) areas of conflict between tribes, states and local governments, (2) obstacles inhibiting the negotiation and implementation of intergovernmental agreements to address conflicts in these areas, and (3) possible measures to encourage and facilitate the successful negotiation of such agreements. As presently anticipated by section 105 (c), the Commission should be charged with the responsibility of preparing and submitting a report on these issues to the President, this Committee, and the House Resources Committee within two years. The findings of the Commission can be used to determine if further legislation is needed to encourage and facilitate intergovernmental agreements, and if so, what steps Congress should take to best accomplish this objective.

Currently, tribes can enter into intergovernmental agreements with state and local governments. The existing agreements on tax issues that I referred to above are examples of this authority. Nonetheless, we would agree that more disputes between tribes and state and local governments can

be-resolved through agreements than are currently being resolved through this method. The reason

that more disagreements are not resolved in this manner is not because tribes, states, and local governments are not aware of alternative dispute resolution (ADR) or because there is a lack of forums offering ADR. For example, a tribe and state wishing to resolve an area of disagreement without resorting to litigation can utilize the services of the Federal Mediation and Conciliation Service to assist them in negotiating and entering into an intergovernmental agreement. No change in the law is necessary for this to happen. However, the focus on ADR in society generally, and the availability of organizations such as the Federal Mediation and Conciliation Service do lead one to wonder why tribes, states and local governments do not pursue this option more frequently. We believe that this question must be answered before legislation is enacted that establishes mechanisms for fostering intergovernmental agreements. We must have better insight into the problem in order to know how to fix it.

We appreciate the interest of the Chairman and this Committee in promoting agreements between tribes and state and local governments. We share that interest and support the enactment of S. 2097 in a modified form that would provide for a two-year study of intergovernmental disputes among tribes, states, and local governments and alternative means for resolving those disputes.

With regard to Title II of this bill, we agree that liability insurance is an important issue and we support the position that DOJ has set forth within their statement on the bill, especially that obtaining liability insurance is a function best left to Tribal governments. The maintenance of such insurance can help to protect tribal treasuries while also offering a meaningful remedy to those who are harmed by tribal activities and operations. More information is needed to assess the extent to which tribes utilize insurance; however, some excellent work has already been done in this area. For example, a study entitled, "Assessment of Access to Private Liability Insurance for Tribes and Tribal Organizations with Self-Determination Contracts/Compacts," was prepared in February 1998 under a Department of Health and Human Services' contract. That study contains extensive findings, recommendations, and conclusions that bear further analysis. We also provide a handbook for tribes and tribal organizations that was prepared under the same contract, a "how to" guide for tribes to reduce private liability insurance costs. This information would enable us to better understand the nature and scope of any problems in this area, and also provide valuable insight into how best to address whatever problems may be found to exist.

We look forward to working with the Committee on the important issues addressed by S. 2097. Should the Committee decide to move forward in considering the bill in its current form we would like to have an opportunity to provide a more detailed analysis of its provisions.

I will be happy to answer any questions you may have.